IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 33623 of 2005(C)

AGAINST THE ORDER DATED / / IN IA 3954/2003 IN OS.535/2003 of PRL.SUB COURT,THRISSUR

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PETITIONER:

VILASINI, AGED 70 YEARS,
W/O. LATE SANKARANKUTTY WARRIER, THRIKKOVIL,
PATHIYAPURAM WARRIATH, WADAKKANCHERRY VILLAGE,
DESOM, THALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS:

WEIZMANN HOMES (P) LTD.,
THRISSUR, REPRESENTED BY ITS DEPUTY MANAGER AND
EXECUTIVE, P.M. MANOJ, S/O. DR.P.V. MONSY,
THRISSUR VILLAGE, THRISSUR TALUK.

BY ADV. SRI.SUNU P.JOHN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.33623/2005 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE SALE DEED NO.1195/1980 DTD. 7/05/1980 OF WADAKKANCHERRY S.R.O.**

EXT.P2: **COPY OF THE PETITION FOR ATTACHMENT.**

EXT.P3: **COPY OF THE CLAIM PETITION DTD. 19/07/2003.**

EXT.P4: **COPY OF THE COUNTER FILED BY THE RESPONDENT IN THE CLAIM PETITION.**

EXT.P5: **COPY OF I.A.4293/03 DTD. 1/08/93.**

EXT.P6: **COPY OF THE FIXED DEPOSIT RECEIPT DTD. 1/08/2003 FOR RS.1,40,000/- ISSUED FROM STATE BANK OF TRAVANCORE, WADAKKANCHERRY BRANCH.**

EXT.P7: **COPY OF THE I.A.NO.4619/03 DTD. 14/08/2003.**

EXT.P8: **COPY OF THE ORDER DTD. 16/08/2003 IN I.A.3954/2003.**

EXT.P9; **COPY OF I.A.9/2004 DTD. 18/12/2004.**

EXT.P10: **COPY OF I.A.9/2004 DTD. 18/12/2004.**

EXT.P11: **COPY OF COUNTER IN I.A.9/2004.**

EXT.P12: **COPY OF COUNTER IN I.A.7200/2003.**

EXT.P13: **COPY OF THE ORDER DTD. 7/02/2005 IN I.A.9/2004.**

EXT.P14: **COPY OF THE ORDER DTD. 7/02/2005 IN I.A.7200/2003.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 33623 OF 2005

Dated this the 1st day of June, 2007

JUDGMENT

In a suit for money filed by the 1st respondent against the son, the husband of the petitioner filed a claim petition objecting the attachment of immovable property before judgment. The learned Subordinate Judge directed the claim petitioner to deposit the plaint amount in a bank and to produce the receipt. Upon production of the receipt the learned Sub Judge noted a lien for the plaint claim on the Fixed Deposit receipt and closed the claim petition itself by Ext.P8 order. A review of Ext.P8 was sought for by the petitioner's husband who filed IA No.9 of 2004. IA No.7200 of 2003 seeking condonation of the delay caused in the matter of the IA was also filed. The learned Sub Judge dismissed IA No.9 of 2004 as well as the delay petition by orders Exts.P13 and P14 finding that there is no sufficient reason for condoning the delay (93 days only) and also that there is no error apparent on the face of the record so as to warrant review of Ext.P8 under Order XLVII Rule 1. In this proceeding under Article 227 of the Constitution the petitioner impugns Exts.P8, P13 and P14.

2. All claim petitions whether they be under Order XXI Rule 58 on the execution side or under Order XXXVIII Rule 8 on the trial side as it

was in this case, are expected to be adjudicated by the court concerned and by virtue of Clause 2 and 4 of Rule 58 of Order XXI, the orders resulting from the adjudication are to be construed as the decrees for purpose of appeal. In the instant case what the learned Subordinate judge has done is to close the claim petition after noting a lien on the Fixed Deposit receipt which was produced as security in response to a direction by the Court. The learned Subordinate judge who was bound to adjudicate the claim has not done so. The non-adjudication of the claim mandated by the Rule was an error apparent on the face of Ext.P8. The learned judge has erred in holding that Ext.P8 is not vitiated by any error apparent on the face. The extent of the delay was only 93 days and the reason stated by the learned judge for not condoning the delay is also not valid.

The result is that the writ petition will stand allowed. Since I quash Ext.P8, it is not necessary to quash Exts.P13 and P14. Ext.P8 is quashed and the learned subordinate judge is directed to adjudicate the claim lodged by the petitioner's late husband on behalf of the petitioner in IA no.3954 of 2003 in IA No.3691 of 1003 in OS No.535 of 2003 after permitting both the parties to adduce whatever evidence they have at their command. After the entire evidence sought for by the parties comes on record, the learned Sub Judge will pass orders on the claim

petition notwithstanding the disposal of the suit. The learned judge will complete the adjudication and pass orders on the claim petition at the earliest and at any rate within three months of receiving copy of this judgment. Till such time as the above directions are complied with, the execution proceeding in so far as they are directed against the property which is the subject matter of the claim shall be kept in abeyance.

PIUS C. KURIAKOSE, JUDGE

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